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liams v. *Hayward,* 1 El. and El. 1040; and *Coleman* v. *Reddick,* 25 U. C. C. P. 579. For a discussion of the theory of this view, see 2 TIFFANY, LANDLORD & TENANT, 1270. The principal case also raises the question of whether, in the case of constructive eviction, the tenant must abandon the premises in order that he have a valid defense to an action for rent. It is held in *Adolphi* v. *Inglima,* 130 N. Y. Supp. 130 and in *Hamilton* v. *Graybill,* 19 Misc. 521 (N. Y.) that abandonment is not necessary. The contrary view is taken in *Boreel* v. *Lawton,* 90 N. Y. 293; *Beakes* v. *Haas,* 36 Misc. 796 (N. Y.); *Barrett* v. *Boddie,* 158 Ill. 479; *International Trust Co.* v. *Schumann,* 158 Mass. 287; *Leifermann* v. *Osten,* 167 Ill. 93; *Ralph* v. *Lomer,* 3 Wash. St. 401; and *Higbie* v. *Weegham Co.,* 126 Ill. App. 97. See 2 TIFFANY, LANDLORD & TENANT, 1265.

MINES AND MINERALS—EASEMENT OF SURFACE OWNER.—The plaintiff, the owner of the surface stratum, drilled a well and projected a pipe through a coal stratum in order to obtain water from a stratum below, which he owned. The defendant, the owner of the coal stratum, in mining, destroyed the pipe. In an action of trespass brought by plaintiff, *held,* that the question of defendant's negligence in destroying the pipe was properly submitted to the jury. *Penn. Central Brewing Co.* v. *Lehigh Valley Coal Co.* (Pa. 1915), 95 Atl. 471.

The important question raised here is whether or not when a stratum below the surface has beeen alienated, the owner of all other strata may have a right to go through this alienated stratum in order to get at his own property below. This question appears to have been decided but once before. In *Chartiers Block Coal Co.* v. *Mellon,* 152 Pa. 286, 25 Atl. 597, 18 L. R. A. 702, such a right was allowed. But it was expressly stated that the right was not based upon the theory of an easement of necessity. Nor is it stated in the principal case that an easement of necessity exists. If indeed such were held to exist, it would seem that the question of negligence were beside the point, since there had been an invasion of a property right. In 13 MICH. L. REV. 336 the creation of easements of necessity by a severance of property is discussed. Here even easements of quasi-necessity are shown to be allowed by some courts. In the principal case, we have an absolute necessity. The only difference is that one section of property is below rather than beside the other. There seems to be no good reason why such a right as is in question should not be definitely declared to be an easement of necessity.

MUNICIPAL CORPORATIONS—POLICE REGULATION OF "JITNEY" BUSSES.—In an interesting series of cases the right of a municipal corporation to regulate the "jitney" by ordinance under its police power is clearly outlined. The facts in the main are identical, the municipality, duly authorized to regulate and control its streets, by ordinance specified as to the experience, physical ability, and habits of the driver, the filing of the route, the license fee, and further required that an indemnity bond from an insurance company be given before permission to operate a "jitney" would be given by the city. In general the objections raised were unreasonableness, occupation tax, no

right to require an indemnity bond, and class discrimination. *Greene* v. *San Antonio* (Tex. Civ. App. 1915) 178 S. W. 6; *Ex parte Sullivan* (Tex. Cr. App. 1915) 178 S. W. 537; and *Ex parte Cardinal* (Cal. 1915) 150 Pac. 348.

It is fundamental in the discussion of the objections to the enforcement of the ordinances in question, to remember that the "jitney" was by the consideration of the courts or by the admissions of counsel, a common carrier. Having determined the public character of the "jitney" the rule of *Munn* v. *Illinois,* 94 U. S. 113 applies, "When private property is devoted to public use it is subject to public regulation." In all three cases the specifications relating to experience and ability of the driver, the filing of the route, and the license fee charged, were upheld as reasonable measures taken to protect the public. The objection that the charge was an occupation tax received consideration in the Texas cases. It was held that the charge was a license fee remunerative for actual expenses of regulation and inspection, and therefore proper. In the *Sullivan* case the right to require an indemnity bond was denied in the dissenting opinion, and the stipulation of an insurance company unreasonable. The basis for the first objection lay in the contention, "a city cannot require bonds inuring to or operating only between third parties." This received answer in the *Cardinal* case wherein it was stated that, "a bond may be required as a subsidiary measure by way of police control, whenever a license is required by way of regulation, or to serve as an indemnity bond for persons injured." In all three cases this power in the city was declared. As to the requirement of an insurance company instead of a personal surety, the majority opinions in the *Sullivan* and *Cardinal* cases permitted the stipulation as a matter within the legislative authority of the city council, having in mind the public protection. The classification of carriers other than steam or interurban lines into: first, street cars; second, ordinary hacks and automobiles; and third, "jitneys" was held to be a reasonable one in the *Sullivan* case; and in the *Cardinal* case a classification based on the rate of fare charged was held not to be unreasonable. In the *Sullivan* case the court in the prevailing opinion regarded as speculative any inquiry as to the legality of the license fee graded according to the carrying capacity of the "jitney." The dissenting judge declared that the graded fee based solely on the number of passengers carried by the "jitney" was not in its nature a charge for inspection and regulation such as could be properly included in a license fee, but was instead a tax, pure and simple.

NEGLIGENCE—LIABILITY OF MANUFACTURER OF DEFECTIVE ARTICLE. — The plaintiff bought a plug of tobacco, the product of defendant company, from a retailer. The plug contained a large black bug that was not visible but which caused the plaintiff injuries by reason of his chewing the plug of tobacco. The plaintiff contended that the bug had been negligently manufactured in the plug by defendant company. The court *held* that the defendant was not liable to the plaintiff because there was (1), no privity of contract between the parties and, (2), no particular relation carrying with it special duties or a special degree of care in such case. *Liggett & Myers Tobacco Co.* v. *Cannon* (Tenn. 1915), 178 S. W. 1009.